United Nations CAT/C/CHN-MAC/CO/5

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
3 January 2016

Original: English

Committee against Torture

Concluding observations on the fifth periodic report of Macao, China*

1. The Committee against Torture considered the fifth periodic report of Macao, China (CAT/C/CHN-MAC/5) at its 1368th and 1371st meetings (see CAT/C/SR.1368 and 1371), held on 17 and 18 November 2015, and adopted the present concluding observations at its 1393rd meeting, held on 3 December 2015.

A. Introduction

2. The Committee welcomes the submission of the report of Macao, China, the written replies to the list of issues (CAT/C/CHN-MAC/Q/5/Add.1) and the supplementary information provided after the consideration of the report.

3. The Committee appreciates the quality of its dialogue with a multisectoral delegation and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the ratification in 2010 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

5. The Committee also welcomes the following legislative measures taken by Macao, China in areas of relevance to the Convention:

(a) The adoption of Law No. 1/2009, amending Law No. 21/88/M on access to law and the courts;

(b) The adoption of Law No. 13/2012, extending legal aid, inter alia, to non-resident workers and their family members with special permits to stay in Macao, China.

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

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6. The Committee also welcomes the initiatives of Macao, China, to adopt agreements or to amend policies and administrative measures to give effect to the Convention, including:

(a) The 2008 agreement with Timor-Leste on legal and judicial cooperation;

(b) The issuance in 2009 of Order 19/SS/2009, ceasing the imposition of solitary confinement as a disciplinary measure on children in the Macao prison between 16 and 18 years of age, and Order 91/DSAJ/2009, limiting the imposition of that measure in the Young Offenders Institute for children between 12 and 16 years of age to night-times only;

(c) The adoption in 2009 of a code of ethics for the Macao prison;

(d) The 2010 agreement with Mongolia and the 2011 agreement with the Hong Kong, China, Office of the International Organization for Migration on cooperation in combating trafficking;

(e) The establishment of mechanisms for front-line staff to identify potential victims of trafficking, the establishment of a 24-hour human trafficking report hotline and the reinforcement of training and awareness-raising campaigns;

(f) The 2010 amendment of the Internal Guidelines of the Judiciary Police, the Work Regulations of the Duty Rooms of the Judiciary Police and the 993 Crime Reporting Hotline, explicitly requesting the criminal investigator to comply strictly with the substantial and procedural legal requirements in relation to the prohibition of torture.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

7. The Committee notes with appreciation the compliance of Macao, China, with the follow-up procedure, but observes that the recommendations below were not fully implemented.

Training

8. Recalling its previous recommendation (see CAT/C/MAC/CO/4, para. 7), the Committee remains concerned that Macao, China, has not yet provided training to health-care professionals on the identification and documentation of cases of torture. It also regrets the lack of information on the organization of regular and compulsory training on the provisions of the Convention for all officials involved in the treatment and custody of persons deprived of their liberty (art. 10).

9. **The Committee recommends that Macao, China:**

(a) **Redouble its efforts to engage specialized personnel to provide training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) to medical doctors and others involved in the investigation and documentation of cases of torture;**

(b) **Promote the use of the Istanbul Protocol among officials involved in the investigation and documentation of cases of torture;**

(c) **Develop modules on the provisions of the Convention in the periodic and compulsory training programmes for all law enforcement officials, judges, prosecutors, prison and immigration officers and others.**

Solitary confinement

10. The Committee welcomes the information provided by Macao, China, that, since the issuance of Order No. 19/SS/2009 (see para. 6 (b) above), the Macao Prison has not imposed solitary confinement on any person under 18 years of age and that the Youth Correctional Institution has significantly reduced the frequency and duration of the disciplinary measure of placing children aged 12 to 16 "in an individual sleeping room" at night. The Committee remains concerned, however, that Decree-Law 40/94/M allows solitary confinement to be imposed on adults as a disciplinary punishment for up to 30 days (arts. 2, 11 and 16).

11. **Macao, China, should compile and regularly publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm, and bring the regulation of solitary confinement into line with international standards and the Committee's jurisprudence, in particular by:**

(a) **Amending Decree-Law 40/94/M in order to reduce the maximum duration of solitary confinement and limit its use as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review;**

(b) **Ensuring that health-care personnel do not have any role in the approval of disciplinary sanctions;**

(c) **Ensuring that general living conditions, including access to open air and physical exercise, are not restricted during solitary confinement and that family contact is maintained;**

(d) **Revising Law No. 2/2007 and prohibiting the use of solitary confinement for juveniles in conflict with the law (rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty);**

(e) **Prohibiting the use of solitary confinement for persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers.**

Trafficking

12. While welcoming the various measures taken for combating human trafficking (see paras. 4 and 6 (d) and (e) above), the Committee is concerned at the very low number of prosecutions and convictions of offenders of trafficking and at the few cases of forced labour registered, in spite of the large number of complaints. The Committee also regrets the lack of a specific programme to address the problem of child sex tourism, despite the fact that more than half of the victims identified during the period under review were under 18 years of age. The Committee is further concerned that the legal alternative to grant residence on humanitarian grounds to foreign victims of trafficking has never been applied, and regrets the lack of information on the existence of a referral system to the asylum procedure for victims who may need international protection (arts. 2, 12, 13, 14 and 16).

13. **Macao, China, should:**

(a) **Enforce the legislative framework and promptly, thoroughly, effectively and impartially investigate, prosecute and, on conviction, punish trafficking offenders, particularly those involved in trafficking for the purpose of forced labour, with appropriate penalties;**

(b) **Continue to provide specialized training to the police, prosecutors and judges on the effective investigation, prosecution and punishment of acts of**

trafficking, and to immigration officers and social workers on the identification of victims of trafficking, especially child victims;

(c) **Strengthen measures to raise awareness of trafficking and adopt a specific programme to combat child sex tourism, as recommended by the Committee on the Rights of the Child;**

(d) **Establish appropriate mechanisms aimed at the early identification of victims of trafficking and at referring such victims, particularly those that face retribution in their country of origin, to the refugee status determination procedure.**

Definition of torture

14. The Committee welcomes the information provided by Macao, China, that the provisions containing the crime of torture are currently under review. In the light of this legislative process, the Committee wishes to note that the crime of torture, determined in article 234, read in conjunction with article 235, of the Criminal Code, is still limited to acts committed by persons vested with the specific public functions listed in article 234 or by persons that usurp those functions. The Committee also notes with concern that the definition of torture does not include any of the purposes contained in article 1 of the Convention and is restricted instead to the intention of impairing the victim's ability to make decisions or freely expressing his or her will. The Committee is further concerned that the distinction between the crime of torture, set out in article 234 of the Criminal Code, and the crime of serious torture, set out in article 236 of the Code, is still in place, which may lead to the perception that there are more and less serious crimes of torture, and may create obstacles for the prosecution of all cases (arts. 1 and 4).

15. **In view of the upcoming review of the legislative provisions dealing with the crime of torture, the Committee reiterates its recommendation that Macao, China, should include a definition of torture in the Criminal Code that is in full conformity with the Convention and covers all the elements contained in article 1. These amendments should ensure that all public officials or any other person acting in an official capacity can be prosecuted for acts of torture. The Committee also recommends that the crime of torture constitute a single offence subject to the relevant aggravating circumstances.**

Investigations of cases of torture and ill-treatment

16. The Committee is concerned that inquiries into complaints of unlawful acts, including torture or ill-treatment, committed by the police are conducted by police officials, which creates a clear conflict of interest. In this regard, the Committee notes with concern that, out of 87 complaints of violence lodged between 2006 and 2011 against members of the security forces and services, only 3 resulted in fines against 5 police officers and 84 were dismissed as unfounded. The Committee also notes that, between 2013 and 2014, 79 per cent of the complaints lodged for acts of torture were dismissed (arts. 2, 12, 13 and 16).

17. **The Committee urges Macao, China, to:**

(a) **Establish confidential complaints mechanisms in all places of detention to facilitate the submission of complaints by victims of torture and ill-treatment, including for obtaining medical evidence in support of their allegations, and to ensure in practice that complainants are protected against any reprisals as a consequence of their complaint or any evidence given;**

(b) **Ensure that all allegations of torture or ill-treatment are automatically transmitted to the Public Prosecutions Office to launch investigations and carry out prompt, effective and impartial investigations whenever there are reasonable grounds**

to believe that acts of torture or ill-treatment have been committed, including of those officials who knew, or should have known, that ill-treatment was occurring and failed to prevent it or report it;

(c) Ensure that the Attorney General entrusts the investigation of reports of torture or ill-treatment by law enforcement officials only to independent criminal investigators and that there is no institutional or hierarchical relationship between the investigators and suspected perpetrators of such acts;

(d) Ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, subject to the observance of the principle of presumption of innocence;

(e) Ensure that the suspected perpetrators are duly tried and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts.

Ombudsman's mandate of the Commission against Corruption

18. While noting the adoption of Organic Law 4/2012 on the Commission against Corruption, amending the previous Law 10/2000, the Committee regrets the lack of information on how the Ombudsman's mandate of the Commission has been reinforced to prevent any violations of the Convention (arts. 2, 12 and 13).

19. **As recommended by other treaty bodies, the Committee urges Macao, China to consider the establishment of an independent human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Such an institution should have a broad mandate to protect human rights and address violations of the Convention and be provided with sufficient financial and human resources to carry out its functions in an efficient manner.**

Body-worn electric shock devices

20. While noting the information provided by Macao, China, that body-worn electric shock devices are only used during prisoner transfers and have not been activated so far in any instance, the Committee remains concerned about the necessity of its use (arts. 11 and 16).

21. **Macao, China, should avoid the use of restraints as much as possible or apply them as a measure of last resort, whenever less intrusive alternatives for control have failed, and for the shortest possible time. The Committee is of the view that the use of body-worn electric shock devices should be subject to the principles of necessity and proportionality and should only be used whenever there are no other less intrusive methods available to control the detainee's movement.**

Surrender of fugitive offenders

22. While noting that Macao, China, has started the negotiations with mainland China and with Hong Kong, China, on an arrangement on the surrender of fugitive offenders, the Committee regrets the lack of information on the content of those agreements. The Committee is concerned that transferred offenders could be exposed to the risk of torture or ill-treatment while in detention or in prison upon return to mainland China or upon indirect transfer through Hong Kong, China (arts. 2 and 3).

23. **The Committee urges Macao, China, to ensure that any agreement on the transfer of offenders to mainland China or to Hong Kong, China, is in line with the obligations of the Convention and contains sufficient legal safeguards, appropriate judicial oversight mechanisms and effective post-return monitoring arrangements to**

protect fugitive offenders against torture or ill-treatment upon return or upon indirect transfer. Macao, China, should not transfer a fugitive to mainland China where there are substantial grounds for believing that he or she would be in danger of being subjected to torture upon return or upon indirect transfer.

Domestic and gender-based violence

24. While the Committee notes with appreciation that Macao, China, has elaborated a draft law on the prevention of domestic violence, it is concerned that the current scope of the draft is not extended to all individuals in an intimate relationship regardless of their sexual orientation. The Committee appreciates the information on the number of complaints on gender-based violence provided during the dialogue, but regrets the lack of data on the number of investigations, prosecutions and convictions related to this type of violence, which impedes the evaluation by the Committee of the effectiveness of the decisions taken against these crimes (arts. 2, 12, 13 and 16).

25. **Macao, China, should:**

(a) **Promptly adopt legislation on domestic violence that protects all victims of such violence without discrimination and ensures that domestic violence is considered a criminal offence subject to ex officio prosecution;**

(b) **Conduct prompt, effective and impartial investigations into all incidents of gender-based and domestic violence and prosecute and punish perpetrators in accordance with the gravity of their acts;**

(c) **Sensitize and train law enforcement personnel, social welfare officials, prosecutors and members of the judiciary on the investigation, prosecution and sanctioning of cases of domestic and gender-based violence and on creating the appropriate conditions for victims to report such cases to the authorities;**

(d) **Strengthen public awareness-raising campaigns to fight domestic violence and gender stereotypes;**

(e) **Ensure that victims of domestic violence benefit from effective protection and have access to sufficient and adequately funded shelters, medical and legal aid, psychosocial counselling and social support schemes.**

Follow-up procedure

26. **The Committee requests Macao, China to provide, by 9 December 2016, information on follow-up to the Committee's recommendations in paragraph 17 (a) to (e) above. In that context, Macao, China is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

27. **Macao, China is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.**

28. **Macao, China is invited to submit its next periodic report, which will be included in the sixth periodic report of China, by 9 December 2019.**